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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 162

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

ARNOLD L. DAILEY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

FILED JULY 2, 1951.

PROBABLE JURISDICTION NOTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Record from the U. S. District Court for the District of Colorado		
Caption	1	1
Indictment (omitted in printing)	1	
Motion to dismiss	2	1
Memorandum opinion, Knous, J.	3	2
Order granting motion to dismiss	4	2
Notice of appeal	6	3
Clerk's statement of docket entries	7	4
Notification to appellee under Rule 12 (omitted in printing)	8	4
Designation of record (omitted in printing)	9	
Clerk's certificate (omitted in printing)	10	
Statement of points to be relied upon and designation of record to be printed	11	
Order noting probable jurisdiction	12	5
	13	6

1 [Caption omitted]

2 In the United States District Court for the District of Colorado Sitting at Denver

Criminal No. 12430

THE UNITED STATES OF AMERICA, PLAINTIFF

vs.

ARNOLD L. DAILEY, DEFENDANT

INDICTMENT—Filed September 29, 1950

The grand jury charges:

That on or about the 14th day of March, 1947, in the County of Delta, State and District of Colorado, ARNOLD L. DAILEY did knowingly and willfully make a false and fraudulent statement and representation in a matter within the jurisdiction of the United States Department of Agriculture, said matter being in connection with the defendant's application for Farmers Home Administration services; that is to say:

That on or about the 14th day of March, 1947, in the County of Delta, State and District of Colorado, the said ARNOLD L. DAILEY did make a false and fraudulent statement and representation to the United States Department of Agriculture, in which he stated that he owned 126 acres of land of the value of $10,000.00, cows, cattle, poultry, machinery, equipment and furniture of the value of $3720.00, which said statement and representation was false and fraudulent in that the said defendant, ARNOLD L. DAILEY did not own 126 acres of land of the value of $10,000.00 and cows, cattle, poultry, machinery, equipment and furniture of the value of $3720.00; all of which the said defendant, ARNOLD L. DAILEY, then and there well knew at the time he made the aforesaid false and fraudulent statement and representation.

A True Bill.

JAMES B. KENNEY,
Foreman.

MAX M. BULKELEY,
United States Attorney.

JNL:fsm

[File endorsement omitted.]

3 In United States District Court

MOTION TO DISMISS—Filed October 20, 1950

Defendant by Lennart T. Erickson, his attorney, moves this Honorable Court for an order dismissing the above entitled action upon the ground that the indictment shows on its face that the alleged false statement was made on March 14, 1947, that the indictment was filed on September 29, 1950, and that more than three years have elapsed between the time the offense was committed and the indictment made, contrary to the statute of limitations set forth in Section 3282, Title 18, U. S. C. A.

LENNART T. ERICKSON,
Attorney for Defendant,
1002 Midland Savings Bldg.,
Denver, Colorado.
TAbor 6119.

[File endorsement omitted.]

4 In United States District Court

THE UNITED STATES OF AMERICA

v.

ARNOLD L. DAILEY, DEFENDANT

Honorable Max M. Bulkeley, United States Attorney for the District of Colorado and the *Honorable Joseph N. Lilly,* Assistant United States Attorney for the District of Colorado, for the United States of America; *Lennart T. Erickson, Esquire,* 1002 Midland Savings Building, Denver, Colorado, for Defendant.

MEMORANDUM OPINION—Filed April 24, 1951

KNOUS, District Judge:

The indictment herein, found on September 29, 1950, charges that on or about March 14, 1947, the defendant did knowingly and wilfully make a false and fraudulent statement concerning his ownership of real and personal property to the Department of Agriculture, an agency of the United States, allegedly in violation of 18 U.S.C. 1001.

The defendant has moved to dismiss the indictment on the ground that the prosecution of the alleged defense is barred by the three-year Statute of Limitations. 18 U.S.C. 3282. The Government argues that the prosecution is still maintainable by reason of the

wartime Suspension of Limitations, 18 U.S.C. 3287, which provides as follows:

> "When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not . . . shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress."

5 The purpose of the Suspension Statute was not to let crimes pass unpunished which had been committed "when the United States is at war." See *United States* v. *Gottfried*, C.C.A., N.Y. 165 F. (2d) 860. However, by its terms the Suspension Statute can have no application to offenses committed at a time when the United States was not at war.

It is conceded, that by Proclamation No. 2714, 12 Federal Register 1, the President proclaimed termination of hostilities of World War II as of December 31, 1946. The offense herein involved, alleged in the indictment as having been done on or about March 14, 1947, thus was not committed until some two and one-half months *after* termination of hostilities of World War II as officially and conclusively proclaimed by the President and at a time when the United States was *not* at war. Hence, the wartime Suspension of Limitations Statute is without application here. The indictment herein was not found and returned until September 29, 1950, which was more than three years next after the alleged commission of the offense on March 14, 1947.

Accordingly, the defendant's motion to dismiss the indictment is granted and it is so ordered.

DATED at Denver, Colorado, this twenty-fourth day of April, A.D. 1951.

WILLIAM LEE KNOUS,
United States District Judge.

[File endorsement omitted.]

6 In United States District Court

ORDER GRANTING MOTION TO DISMISS INDICTMENT—Filed April 24, 1951

The motion of the defendant to dismiss the Indictment herein, having heretofore come on to be heard and having been argued by counsel and by the Court taken under advisement, and the Court being now fully advised in the premises;

It is ordered by the Court, pursuant to a Memorandum Opinion

filed herein this day, that the said motion be, and it is hereby granted.

Wherefore, it is considered by the Court that the defendant of and from the premises in this said indictment specified be discharged and go hence hereof without day.

[File endorsement omitted.]

7 In United States District Court

NOTICE OF APPEAL—Filed May 24, 1951

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Colorado, entered April 24, 1951, dismissing the indictment which charged the defendant with making a false and fraudulent statement in a matter within the jurisdiction of the United States Department of Agriculture, in violation of Section 35 A of the Criminal Code, 18 U. S. C. (1946 ed.) 18; reenacted as 18 U. S. C. (1948 rev.) 1001.

Dated May 24, 1951.

PHILIP B. PERLMAN,
Solicitor General,
Department of Justice,
Washington, D. C.

[File endorsement omitted.]

8 In United States District Court

[Title omitted]

CLERK'S STATEMENT OF DOCKET ENTRIES AS TO DEFENDANT, AS REQUIRED UNDER RULE 37 OF THE CRIMINAL RULES

	Date
1. Order: Grand Jury returns indictment—Warrant of arrest to issue. Bail $1000.00	Sept. 29, 1950
2. Indictment	Sept. 29, 1950
3. Praecipe—Warrant of arrest issued and to Marshal	Sept. 29, 1950
4. Order: Continued to 10/20/50	Oct. 11, 1950
5. Marshal's return W/A—executed 10/6/50	Oct. 17, 1950
6. Order: Deft. appeared—leave granted to file motion to dismiss—Deft. to be let to Bail on his personal recognizance	Oct. 20, 1950
7. Motion to Dismiss	Oct. 20, 1950

8.	Order: On motion to Dismiss—argued and taken under advisement	Mar. 30, 1951
9.	Memorandum Opinion of Judge Knous	Apr. 24, 1951
10.	Order of dismissal	Apr. 24, 1951
11.	Notice of Appeal, filed	May 24, 1951

Dated at Denver, Colorado, this 25th day of May, A.D. 1951.

Attest:

G. WALTER BOWMAN,
Clerk.

9 [Title omitted]

Notification to Appellee under Rule 12 (omitted in printing).

10 [Title omitted]

DESIGNATION OF RECORD (omitted in printing)

11 Clerk's Certificate to foregoing transcript omitted in printing.

12 In the Supreme Court of the United States, October Term, 1951

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF RECORD—Filed July 18, 1951

Pursuant to Rule 15, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the Wartime Suspension of Limitations Act (section 1 of the Act of August 24, 1942, 56 Stat. 747, as amended by the Act of July 1, 1944, section 19(b), 58 Stat. 667, and the Act of October 3, 1944, section 28, 58 Stat. 765; revised in 1948 as permanent legislation, 18 U.S.C. 3287) applies only to offenses committed before the date of the termination of hostilities in World War II as officially proclaimed by the President, i.e., those committed before December 31, 1946.

2. The District Court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points to be relied on.

PHILIP B. PERLMAN,
Solicitor General.

July 18, 1951

13 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 162

[Title omitted]

ORDER—October 8, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is transferred to the summary docket and assigned for argument immediately following No. 20, United States vs. Smith.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 971615 314